



Personal Information Contract Checklist Version 2.2

**Saskatchewan Justice
Access and Privacy Branch**

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Introduction

The Government of Saskatchewan has legal and policy obligations to protect the personal and personal health information in its possession and control. In particular, Government Organizations must ensure compliance with *The Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*.

When personal information or personal health information is collected and managed within a Government Organization, that Organization will manage the information such that it fulfills its duties. The same care must be taken when personal information or personal health information is disclosed to a third party or collected by a third party as part of a service to government. This guide is created to help managers understand certain privacy obligations that must be considered even when contracting for services.

For additional information on privacy of personal information and personal health information, contact your organization's Privacy Officer.

Information is also available from:

Access and Privacy Branch
Saskatchewan Justice
1020, 10th Floor, 1874 Scarth Street
Regina, SK, S4P 3V7

Or by visiting the Access and Privacy Branch on the Saskatchewan Justice Web Site at: www.saskjustice.gov.sk.ca.

Please Note: The guide is not intended to provide legal advice. The sample contract clauses provide suggested wording only. Please consult your legal counsel on contract matters including appropriate wording for specific contracts.

Background

In 2003, the Government of Saskatchewan approved *An Overarching Personal Information Privacy Framework for Executive Government* which, among other things, directed that government organizations take steps in all outsourcing contracts to protect personal information. This resulted in the creation of a Personal Information Contract Checklist, which was circulated to all government organizations in 2004.

In 2005, the Personal Information Contract Checklist was revised to specifically address issues related to the USA Patriot Act and to Criminal Records checks in government.

In 2007, the introductions to the Checklist were modified and the Checklist re-issued as Version 2.2.

Government departments and agencies are required to use the Personal Information Contract Checklist when negotiating all new and renewed contracts.

Application– Who Should Use the Checklist?

This Personal Information Contract Checklist should be used by all Government Organizations within Executive Government when contracting for services.

The Purpose of the Checklist

The Personal Information Contract Checklist will help Government Organizations consider a number of issues associated with the collection and disclosure of personal information in outsourcing contracts including:

- that personal information is protected by *The Freedom of Information and Protection of Privacy Act* and cannot be collected or disclosed unless there is legal authority within that Act;
- that personal health information is protected by *The Health Information Protection Act* and cannot be collected or disclosed unless there is legal authority within that Act;
- whether the Services required can be provided without collecting or disclosing that information;
- the ability of the Contractor to protect the information;
- the need to have confidentiality provisions protecting the information and some of the content that should be included in those provisions.

Completing the Checklist will:

- help you decide whether or not to proceed with the arrangement with the contractor;
- help you determine the content of Requests for Proposal, Requests for Interest, etc., when tendering for a service; and
- help you determine the content of the contract negotiated for the service.

Sample Contract Language

All contracts under which personal information is made available should have clauses which protect that information. However, it is not possible to use the same “standard” clause or agreement for each situation. The details of the contract need to be tailored to the specific circumstances of the Services to be provided.

Attached to this package, for your reference, are “sample” clauses which can be tailored to meet the specific needs of the situation.

Documentation

The completed Checklist should be included in the documentation which accompanies the contract when it is being routed in the Government Organization for execution. The officials who have created the contract would indicate that the checklist has been reviewed and a confidentiality clause appropriate for the contract has been included.

Definitions

Government Organization, for the purposes of this Checklist, Government Organizations include:

- All provincial government departments and agencies;
- Boards, commissions, and other bodies prescribed in *The Freedom of Information and Protection of Privacy Act*.
- Treasury Board Crown corporations not including Crown corporations reporting through the Crown Investments Corporation.

See Appendix A of the *Overarching Personal Information Privacy Framework for Executive Government* for a more detailed list. Please be aware that the list changes from time to time as Government Organizations change.

Personal Information can be generally described as any information about an identifiable individual. It can be as simple as a person's name and address, or name and telephone number. There are a number of exceptions to this definition and a more complete definition of personal information can be found in section 24 of *The Freedom of Information and Protection of Privacy Act (FOIPP)*.

Personal Health Information can be generally thought of as a subset of Personal Information, which relates to information provided or generated in the delivery of health services. It includes:

- information about the physical or mental health of an identifiable individual;
- information with respect to a health service provided to an identifiable individual;
- information collected incidental to providing health services to that individual, including information collected to register an individual for a health service.

A more complete definition of Personal Health Information can be found in clause 2(m) of *The Health Information Protection Act (HIPA)*.

Note: For the purposes of this Checklist the more generic term of Personal Information is often used to apply to both Personal Information and Personal Health Information

How to Use the Checklist

<i>Step</i>	<i>Action</i>	<i>Benefit</i>
1	<p>Decide if you need to use the checklist.</p> <p>If you are entering into any arrangement with a third party involving personal or personal health information, use the checklist. Examples of arrangements include:</p> <ul style="list-style-type: none">• contracting with a third party for IT services;• contracting with a third party to provide services to the public on behalf of government;• providing a researcher with data to conduct research for the government or for the researcher. <p>Note: The Checklist should be used prior to tendering for services, to ensure the Request for Proposals or other calls for interest identify all potential obligations.</p>	All arrangements are reviewed.
2	<p>Complete the checklist – consult legal counsel and your Privacy Officer as necessary.</p>	The proposed/ existing arrangement/ service is reviewed and the Government Organization is confident that personal information will be protected if the agreement is finalized.
3	<p>Using the appropriate sample privacy clauses, negotiate an agreement with the service provider. Consult with your legal counsel as required.</p>	The Government Organization is able to apply standard language to the negotiations, helping to achieve consistency within government.
4	<p>The completed checklist is retained with the contract. Deviations from the recommended approach are documented.</p>	Government is able to demonstrate that a proper review was conducted before an agreement was signed. Any deviations from the sample language can be explained.

Appendix “A”

Personal Information Contract Checklist

Project:	Gov’t Org/ Branch:
Completed by:	Date Completed:

Before tendering or negotiating a contract, consider these questions....

1. Is Personal Information or Personal Health Information collected or disclosed under this arrangement? (*See Terms and Definitions*)

Yes _____ No _____

If yes, proceed to question # 2 **If no**, you are finished the checklist.

2. Is Personal Information or Personal Health Information being made available (**disclosed**) to the contractor under this arrangement?

Yes _____ No _____

If yes, proceed to question # 3.

Is Personal Information or Personal Health Information being **collected** by the Contractor on behalf of the government under this arrangement?

Yes _____ No _____

If yes, proceed to question # 4.

Questions about disclosure

- 3.1 Can the services be performed without making the Personal Information available? Is it possible or feasible to have the services provided using de-identified information in which the identifying features (generally the name) are removed such that it is not reasonable to expect that the information will identify a person?

Yes _____ No _____

IF YES - then consider providing de-identified information only. (Note: it is a requirement of HIPA to disclose only de-identified information if it is reasonably practicable to do so. See section 23(4))

IF NO - then the Personal Information or Personal Health Information made available should be limited to what is necessary to provide the service.

- 3.2 What is the legal authority for disclosing the Personal Information or Personal Health Information to the Contractor (i.e. what provisions *FOIPP*, *HIPAA* or other legislation permit you to disclose the information)?

For many contracts involving Personal Information that authority may be found in clause 16(b) of the FOIPP Regulations.

NOTE: If you cannot identify any authority, then you cannot disclose the information.

List legal authority here (attach if necessary):

Proceed to question # 5

Questions about collection

- 4.1 Is all of the information being collected reasonably necessary for the purposes of the Program?

Yes _____ No _____

IF NO – limit what will be collected to that which is necessary.

FOIPP and HIPA only permit the collection of Personal Information reasonably required for the purposes of the program. In the case of Personal Health Information, HIPA requires the collection to:

- *reasonably be expected to benefit the person to whom the information relates;*
- *authorized to be collected under another Act or Regulation or Court Order; or*
- *collected with the consent of the person.*

Subsection 24(2) of HIPA permits collection of Personal Health Information for secondary purposes as well, if the reason for collection is one for which Personal Health Information can be disclosed under HIPA.

- 4.2 How will the Personal Information be collected? Is the collection authorized by FOIPP or HIPA?

- FOIPP requires, that where reasonably practicable, the collection of Personal Information is to be directly from the person to whom the information relates and only collected in an indirect fashion in the circumstances listed in section 26 of the Act.

If there is no authority under section 26 to collect it indirectly, and it is reasonably practicable to collect the information directly then the information can only be collected directly from the individual.

- HIPA requires the collection of Personal Health Information to be directly from the person to whom the information relates and can only be collected in an indirect fashion in the circumstances listed in section 25 of the Act.

If there is no authority under section 25 to collect it indirectly, then the information can only be collected directly from the individual.

List legal authority here (attach if necessary):

Proceed to question # 5

Questions for both collection and disclosure

5. The Contractor needs to be able to protect the information provided.

What is the level of protection that you expect? It should not be any less than the level of protection which you use to protect the information within your Government Organization. Consider the following:

- 5.1 Does the Contractor have proper policies and procedures restricting access to this information only to its employees with a need to know the information?

Yes _____ No _____

A copy of the policies and procedures should be retained.

- 5.2 Does the Contractor have a process to be able to identify who accessed the information?

Yes _____ No _____

- 5.3 Does the Contractor have a process which will immediately remove the ability of former employees to access information?

Yes _____ No _____

- 5.4 The USA Patriot Act could enable the USA government to obtain information which is stored, processed or transmitted into the USA or which is in the control of an American corporation. The USA Patriot Act could compel the Contractor to disclose Personal Information, notwithstanding any contractual commitment to keep it confidential. Accordingly, if the Act does apply to the Contractor, consideration should be given as to whether the Government Organization wants to accept that risk, given the nature of the information at issue, or not use that Contractor.

Are you satisfied that the contractor is not an American corporation and that the information will not be stored, transmitted or processed (by the contractor or a subcontractor) in the USA and/or, if it is potentially subject to the USA Patriot Act are you willing to accept the potential risk?

Yes _____ No _____

- 5.5 Have you discussed the previous four questions with the Contractor and are you satisfied that the Contractor can meet the security level that is expected?

Yes _____ No _____

IF NO - then you shouldn't enter into the contract.

6. Are you satisfied that the Contractor has no criminal background which might cause concern in the Contractor having this information? If the Contractor is a corporation, does it have a criminal record check (CRC) policy for its employees? You should be aware that CRCs are required for Contractors (or their employees) who deliver services which, if delivered by a government employee, the government employee would be required to have a CRC.

Yes _____ No _____

IF NO – you shouldn't proceed with the contract.

Negotiating/ tendering a contract, things to consider...

7. When Personal Information or Personal Health Information is being collected for the government, the contract should make it clear who owns the Personal Information being collected. Unless there is a good reason to the contrary, the information should be the property of the government and a clause should be included in the contract to indicate this.

8. The contract should have provisions which require the Contractor to protect the information and restrict what the Contractor can do with it. It is impossible to create a “standard” provision to include in all contracts, as the language of the provision will need to reflect the exact circumstances of the services being provided.

There are a few “**sample**” clauses attached, which can be **modified** to fit your circumstances.

The contract should require the Contractor to:

- keep the information provided in confidence and not further disclose it, unless the services require it.
- not use the information for any purpose other than providing the services
- report to you immediately if there is any suspicion the information has been compromised, or when an order, warrant or any other document purporting to compel production of the information has been served upon the Contractor.
- permit you to audit the Contractor's security practices.
- return the information to you or to destroy the information when the contract has expired or is terminated. You may want to consider if any part of the information should be destroyed more frequently (for example, in a long term contract for mailing out information, should the information be destroyed shortly after each mail out?)
- where the contract requires subcontractor services, that the subcontractor be approved by the department and sign a commitment in favour of the department or institution to protect the information to the same degree as the Contractor

9. Should there be any provisions providing for special requirements for storing or handling the information? For example, should there be requirements that the Contractor:

- encrypt or compress the information?
- keep it separate and apart from Personal Information provided by other clients of the Contractor?
- keep back up copies at a place other than the place where the information is stored?
- keep the information stored in the province

Other Issues (Sometimes addressed in other areas of the contract)

10. What are the remedies available if the Contractor breaches the requirements of the contract respecting Personal Information? Should there be a provision whereby the Contractor agrees to provide a fixed amount as damages representing estimated losses for breaching the confidentiality provisions? There should be an ability to terminate the contract in such a circumstance.
11. Does the Contractor indemnify the department or agency in the event the Contractor breaches the security requirements of the Contract?
12. Is there a provision precluding assignment of the contract by the Contractor without the consent of the government?

Appendix “B”

Sample Clauses

The following “sample” clauses can serve as a basis for negotiating a contract with a third party whom you plan to have collect Personal Information or Personal Health Information on your behalf, or to whom you plan to disclose Personal Information or Personal Health Information to provide a service to government.

Terminology

You should note that when using the sample clauses, you will have to ensure that the terminology in the provision which refers to the parties (for example the terms “Minister” and “Contractor”) are consistent with the terms that have been used to describe the parties in the contract you are working on.

Sample clauses are divided into three sections:

- **Disclosure** including:
 - a basic disclosure clause with no subcontracting;
 - a clause with subcontracting permitted; and
 - a Subcontractor Confidentiality Agreement.
- **Collection** including:
 - a basic collection clause with no subcontracting; and
 - a Subcontractor Confidentiality Agreement.
- **Optional** including clauses for:
 - Criminal Record Checks;
 - Termination;
 - Indemnity; and
 - Assignment.

Disclosure

- The clauses in this section can be used when negotiating a contract with a service provider where the Government Organization will disclose Personal Information or Personal Health Information to that Contractor as part of the Contract. For example, where the Government Organization outsources the management of a databases containing Personal Information.

Basic disclosure clause (no subcontracting disclosure of information)**6.0 CONFIDENTIALITY**

6.1 The Contractor acknowledges that in order to provide the Services, it will require and receive documents, data and other information from the Minister, including personal information within the meaning of The Freedom of Information and Protection of Privacy Act and/or personal health information within the meaning of The Health Information Protection Act (collectively referred to throughout this section as “Confidential Information”). In that regard, the Contractor agrees that it will:

- (a) protect and secure the Confidential Information to ensure that it remains confidential and will not disclose the same to any third party without the express written authorization of the Minister;
- (b) keep the Confidential Information separate and apart from other information and will not combine the information with any other information;
- (c) not, without the prior written consent of the Minister, process, store or transmit the Confidential Information in a country other than Canada;
- (d) not use the Confidential Information for any purpose other than for the provision of Services under this Agreement;
- (d) promptly return the Confidential Information to the Minister, or destroy the Confidential Information in a manner approved by the Minister and provide written confirmation to the Minister that it has been so destroyed, when it is no longer required by the Contractor to provide Services, and in any event no later ____ days after the termination or expiration of this Agreement.

6.2 The Contractor will make the Confidential Information accessible only to those of its employees who require it to perform the Services and shall ensure that such employees are aware of and abide by the obligations of confidentiality under clause 6.1.

6.3 The Contractor will immediately advise the Minister:

- (a) if the Contractor knows or suspects that the Confidential Information may have been compromised;
- (b) if the Contractor or an affiliated company of the Contractor is served with an Order, demand, warrant or any other document purporting to compel the

production of any of the Confidential Information, including an order made pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT); and

- (c) should the Contractor become aware that any requirement of this section 6.0 has been breached.

6.4 The Contractor will indemnify and save harmless the Minister from any actions, causes of action and liabilities of any form or kind arising out of or relating to the breach of any of the Contractor’s obligations under this section 6.0.

6.5 The Contractor agrees to permit the Minister to have access to the Contractor’s premises, records and employees at any reasonable time, to perform any reviews and audits that the Minister considers advisable to ensure that the Contractor is meeting the requirements of this section 6.0 and the Contractor will provide its full co-operation for the purposes of such reviews or audits.

6.6 This section shall survive the expiration or termination of this Agreement.

Does the contract deal with termination and indemnification for breach of this section? Does the contract prohibit an assignment of the Agreement without the consent of the Minister? Does the contract require Criminal Record Checks in accordance with government policy (see “Optional Clauses”)?

Sample IT Disclosure Clause (permitting subcontractor disclosure)

6.0 CONFIDENTIALITY

6.1 All information, documents, data, software and other Confidential Information, including passwords, Personal Information within the meaning of The Freedom of Information and Protection of Privacy Act, and Personal Health Information within the meaning of The Health Information Protection Act, whether in paper, electronic or other form and shared orally, visually or electronically, (the “Confidential Information”) which is provided to or obtained by the Contractor or its contractors, agents, officers or employees in the course of performing this Agreement shall be treated and maintained by the Contractor as confidential and shall not be disclosed except with the prior written consent of the Minister.

6.2 While Confidential Information are located at the Minister’s premises the Contractor shall safeguard the Confidential Information in accordance with the Minister’s information security policies and practices applicable to the Minister’s premises. Confidential Information shall only be removed from the Minister’s premises if and to the extent necessary to perform the Services and only with the prior knowledge of the Minister. The Contractor shall safeguard Confidential Information that are removed from the Minister’s offices in the same manner and to the same extent that it safeguards confidential documents, data and information of its own, or in such manner and to such extent as the Minister may otherwise require.

- 6.3** The Contractor shall use Confidential Information only for the purpose of providing the Services. The Contractor shall only divulge Confidential Information to those of its officers and employees who require such for the performance of this Agreement. The Contractor shall ensure that such officers and employees are aware of and comply with the provisions of this section 6.0.
- 6.4** The Contractor will not, without the prior written consent of the Minister, process, store or transmit the Confidential Information in or to a country other than Canada.
- 6.5** If to provide the Services the Contractor must disclose or make accessible any Confidential Information to a third party, the Contractor shall, before doing so obtain from the third party a written agreement in favour of the Contractor and the Minister, in a form satisfactory to the Minister, under which the third party agrees to be bound by the obligations contained in this section 6.0 applicable to the Contractor.
- 6.6** The Contractor agrees to permit the Minister to have access to the Contractor’s premises, records and employees at any reasonable time to perform reviews and audits that the Minister considers advisable to ensure that the Contractor is meeting the requirements of this section 6.0. The Contractor further agrees to provide its full co-operation for the purposes of such reviews and audits. Officers and employees of the Contractor, its contractors and agents will be subject to the same electronic monitoring as government employees while on the Minister’s premises.
- 6.7** The Contractor will immediately report to the Minister:
- (a) if the Contractor or an affiliated company of the Contractor is served with an Order, demand, warrant or any other document purporting to compel the production of any of the Confidential Information, including an order made pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT); and
 - (b) if the Contractor knows of or suspects that:
 - (i) there has been a breach of a provision of this section 6.0, or
 - (ii) that the confidentiality of the Confidential Information has been compromised;
- 6.7** The Contractor shall return to the Minister all Confidential Information, except to the extent that the Minister agrees in writing to the destruction by the Contractor of any of the Confidential Information in which case the Contractor shall confirm in writing to the Minister that such Confidential Information have been destroyed:
- (a) when they are no longer required by the Contractor to provide Services; and
 - (b) as soon as possible but not later than 15 days of the date of termination or expiration of this Agreement.
- 6.8** The parties hereto agree not to disclose or make available to anyone not entitled to the benefit of this Agreement any specific financial information, including but not limited to prices, contained in this Agreement without the written consent of the other party.
- 6.9** The Minister agrees not to disclose or make available to anyone not entitled to the benefit of this Agreement any information divulged by the Contractor the disclosure of which

would be harmful to the business operations of the Contractor without the written consent of the Contractor.

6.10 The provisions of this section 6.0 shall not prevent either party from disclosing any documents, data or information as necessary to comply with any applicable statute or other law requiring such disclosure, including for the provision of legal services.

6.11 This section shall survive the expiration or termination of this Agreement.

Sample Subcontractor Confidentiality Agreement (disclosure)

Made by _____ (the Subcontractor)

in favour of

_____ (the Contractor)

and

The Government of Saskatchewan represented by the

Minister of _____ (the Minister)

Whereas by agreement dated _____ (the Service Agreement) the Minister contracted for the delivery of certain services (the Services) from the Contractor;

And Whereas in order to provide the Services the Contractor requires certain subcontract services which the Subcontractor wishes to contract with the Contractor to provide;

And Whereas the provision of the subcontract services may result in the Subcontractor obtaining certain personal information, personal health information, documents, data, software and other information, including passwords, whether in paper, electronic or other form, provided by or belonging to the Minister, or developed or collected for the Minister in the course of performing the Services (the Confidential Information);

And Whereas under the Service Agreement, the Minister requires the Contractor to obtain from any person who provides subcontract services, an agreement made in favour of the Minister addressing the confidentiality of the Confidential Information;

Therefore in consideration of being permitted to act as a subcontractor to provide subcontract services related to the Services and being permitted access to certain Confidential Information as necessary to provide the subcontract services, the Subcontractor hereby agrees as follows:

1. It will treat the Confidential Information as confidential and shall not further disclose them to any other party;
2. It will use the Confidential Information only for the purpose of providing the Services;
3. It will disclose or make accessible the Confidential Information only to those of its officers or employees who require them for the purpose of providing the Services and shall ensure that such officers and employees are aware of and comply with the provisions of this agreement;
4. It will safeguard the Confidential Information to the same extent as required of the Contractor under the Service Agreement and comply with the confidentiality obligations placed on the Contractor under that Agreement. The Subcontractor acknowledges that the Contractor has provided it with a copy or statement of the applicable requirements of the Service Agreement;

5. It will promptly return the Confidential Information to the Contractor when no longer required for the purpose of providing the Services or if earlier requested by the Contractor or the Minister;
6. It will immediately report to the Contractor and the Minister any known or suspected breach of the requirements of this agreement; and
7. The Contractor and the Minister will have the right:
 - (a) to perform reviews and audits to make sure that the Subcontractor is meeting the requirements of this agreement, and the Subcontractor will provide access to its premises and its full co-operation for the purpose of such reviews or audits;
 - (b) to immediately terminate this agreement should the Subcontractor breach any provision of this agreement.

Agreed to this _____ day of _____, 20____.

(add Signature Lines, etc)

Collection**Sample Collection Contract Clause (no subcontract disclosure)****6.0 CONFIDENTIALITY AND PROPERTY RIGHTS**

- 6.1** The Contractor acknowledges that, in order to provide the services, it will collect personal information about individuals on behalf of, and receive such information from, the Minister (referred to throughout this section as “Confidential Information”). In that regard, the Contractor agrees that it will protect and secure the Confidential Information in accordance with the Minister’s policies and standards to ensure that it remains confidential and will not disclose the same to any party other than the Minister except with the express written authorization of the Minister.
- 6.2** The Contractor agrees that:
- (a) it will not use the Confidential Information for any purpose other than for the provision of Services under this Agreement;
 - (b) not, without the prior written consent of the Minister, process, store or transmit the Confidential Information in a country other than Canada;
 - (c) it will promptly:
 - (i) return the Confidential Information to the Minister; or,
 - (ii) destroy the Confidential Information in a manner approved by the Minister and provide written confirmation to the Minister that it has been so destroyed; when the information is no longer required by the Contractor to provide Services, and in any event upon termination or expiration of this Agreement.
- 6.3** The Contractor will immediately advise the Minister:
- (a) if the Contractor knows or suspects that the Confidential Information may have been compromised;
 - (b) if the Contractor or an affiliated company of the Contractor is served with an Order, demand, warrant or any other document purporting to compel the production of any of the Confidential Information, including an order made pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT); and
 - (c) should the Contractor become aware that any requirement of this section 6.0 has been breached.
- 6.4** The Contractor will make the Confidential Information accessible only to those of its employees who require it to perform the services and shall ensure that such employees are aware of and abide by the obligations in this section 6.0.
- 6.5** The Contractor will indemnify and save harmless the Minister from any actions, causes of action and liabilities of any form or kind arising out of or relating to the breach of any of the Contractor’s obligations under this section 6.0.

6.6 All documents, data, information or material in any form, collected, compiled, produced or prepared for the Minister pursuant to this Agreement, including all Confidential Information, shall be owned by and remain the property of the Minister.

6.7 The Contractor agrees to permit the Minister to have access to the Contractor’s premises, records and employees at any reasonable time, to perform any reviews and audits that the Minister considers advisable to ensure make sure that the Contractor is meeting the requirements of this section 6.0.

6.8 This section shall survive the expiration or termination of this Agreement.

(subcontract clause – if required)

6.x If to provide the Services the Contractor must obtain a third party to whom Confidential Information must be disclosed or will be obtained by the third party, the Contractor shall obtain from the third party a written agreement in favour of the Contractor and the Minister, in a form satisfactory to the Minister, under which the third party agrees to be bound by the obligations contained in this section 6.0 applicable to the Contractor.

(use of this clause requires a separate subcontractor agreement to be executed, similar to the one attached)

**Does the contract deal with termination and indemnification for breach of this section?
Does the contract prohibit an assignment of the Agreement without the consent of the Minister? Does the contract require Criminal Record Checks in accordance with government policy (see “Optional Clauses”)?**

(see sample clauses under the disclosure portion of the checklist)

Sample Subcontractor Confidentiality Agreement (collection)

Made by

_____ (the Subcontractor)

in favour of

_____ (the Contractor)

and

The Government of Saskatchewan represented by the

Minister of _____ (the Minister)

Whereas by agreement dated _____ (the Service Agreement) the Minister contracted for the delivery of certain services (the Services) from the Contractor;

And Whereas in order to provide the Services the Contractor requires certain subcontract services which the Subcontractor wishes to contract with the Contractor to provide;

And Whereas the provision of the subcontract services may result in the Subcontractor accessing or obtaining certain personal information, personal health information, documents, data, software and other information, including passwords, whether in paper, electronic or other form, provided by or belonging to the Minister, or developed or collected for the Minister in the course of performing the Services (the Minister’s Confidential Information);

And Whereas under the Service Agreement, the Minister requires the Contractor to obtain from any person who provides subcontract services, an agreement made in favour of the Minister addressing the confidentiality of the Minister’s Confidential Information;

Therefore in consideration of being permitted to act as a subcontractor to provide subcontract services related to the Services and being permitted to obtain certain of the Minister’s Confidential Information as necessary to provide the subcontract services, the Subcontractor hereby agrees as follows:

1. It will treat the Minister’s Confidential Information as confidential and shall not further disclose them to any other party;
2. It will use the Minister’s Confidential Information only for the purpose of providing the Services;
3. It will disclose or make accessible the Minister’s Confidential Information only to those of its officers or employees who require them for the purpose of providing the Services and shall ensure that such officers and employees are aware of and comply with the provisions of this agreement;
4. It will safeguard the Minister’s Confidential Information to the same extent as required of the Contractor under the Service Agreement and comply with the confidentiality obligations placed on the Contractor under that Agreement. The

Subcontractor acknowledges that the Contractor has provided it with a copy or statement of the applicable requirements of the Service Agreement;

5. It will promptly return the Minister’s Confidential Information to the Contractor when no longer required for the purpose of providing the Services or if earlier requested by the Contractor or the Minister;
6. It will immediately report to the Contractor and the Minister any known or suspected breach of the requirements of this agreement; and
7. The Contractor and the Minister will have the right:
 - a. to perform reviews and audits to make sure that the Subcontractor is meeting the requirements of this agreement, and the Subcontractor will provide access to its premises and its full co-operation for the purpose of such reviews or audits;
 - b. to immediately terminate this agreement should the Subcontractor breach any provision of this agreement.

Agreed to this _____ day of _____, 20____.

(Subcontractor)

(Contractor)

(Minister)

Optional Clauses**Optional Criminal Record Check clause(s)**

xx. The Contractor shall not, without the prior written approval of the Minister, use any employee to provide Services who has a criminal record. Where requested by the Minister the Contractor will provide written verification that it’s employees providing Services have no criminal record

or

Where a CRC has not been done before services are provided

xx. The Contractor agrees that it will perform a criminal record check on any employees used to provide the Services. The Contractor will, within _____ weeks (period reasonably required to process CRC) of the date of this agreement:

- (a) certify to the Minister in writing that the employee’s criminal record check discloses no criminal convictions; or
- (b) if the criminal record check discloses a criminal conviction, provide the Minister with a copy of the criminal record check and the Minister may, in its sole discretion, require the Contractor to replace such employee with another employee suitable to the Minister.

Sample Termination Clause

xx. The Minister may immediately terminate this agreement by written notice to the Contractor should the Contractor, its contractors or agents breach any provision of section ____.

Sample Indemnity Clause

xx. The Contractor will indemnify and save harmless the Minister, its officers, employees and agents, from and against any claims, liabilities, demands costs, expenses and causes of action of any nature whatsoever that may be made against the Minister:

- (a) arising out of the breach or failure to perform any provision of this Agreement by the Contractor or its contractors or agents;
- (b) relating to injury (including death) to persons or loss of or damage to property arising out of the willful misconduct or negligence of the Contractor, its contractors, or agents This section shall survive the expiration or termination of this Agreement.

Sample Assignment Clause

xx. This Agreement shall not be assignable by either party hereto without the written consent of the other party.